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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 ANTONIO SARATE-MECINA,

12 Defendant.

Case No. CR07-5612 FDB

ORDER DENYING MOTION FOR
REDUCTION OF SENTENCE AND
FOR APPOINTMENT OF COUNSEL

13
14 Defendant Sarate-Mecina has filed a Motion for Reduction in Sentence based on the United
15 States Sentencing Commission's Amendment No. 706. This amendment generally reduces by two
16 levels the base offense levels applicable to crack cocaine offenses. The amendment became
17 retroactive effective March 3, 2008. The government filed a response asserting that the motion
18 should be denied because the relevant guidelines amendment (reduction of two levels) does not
19 alter the Defendant's sentence as the court imposed the statutory mandatory sentence of months.

20 Defendant Sarate-Mecina was sentenced on September 23, 2008, for conspiracy to distribute
21 heroin, in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(B), and 846, Count 1, and possession of
22 cocaine base with intent to distribute in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(A), Count 5.
23 Count 1 carried a mandatory minimum sentence of 60 months, and Count 5 carried a mandatory
24 minimum of 120 months. The Court imposed a sentence of 120 months, the statutory minimum.
25 According to the Bureau of Prisons, his release date is June 10, 2016.

26 ORDER - 1

1 Jurisdiction to grant a sentence reduction in this case is derived from 18 U.S.C. §
2 3582(c)(2), which provides:

3 [I]n the case of a defendant who has been sentenced to a term of imprisonment based
4 on a **sentencing range** that has subsequently been lowered by the Sentencing
5 Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the
6 Director of the Bureau of Prisons, or on its own motion, the court may reduce the
term of imprisonment, after considering the factors set forth in section 3553(a) to the
extent that they are applicable, if such a reduction is consistent with applicable
policy statements issued by the Sentencing Commission.

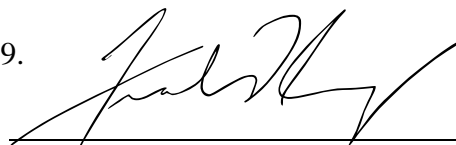
7 The language of § 3582(c)(2) provides the court with authorization to reduce a sentence
8 where the applicable “sentencing range” has been subsequently lowered. The amended guideline
9 range is determined by substituting only the retroactive crack cocaine amendment to the guidelines
10 as applied at the original sentencing and all other guideline application decisions for the original
11 sentencing remain unaffected. The Sentencing Commission has not altered, and cannot alter, a
12 statutory mandatory minimum sentence, and that mandate continues to apply. A reduction in the
13 Defendant’s term of imprisonment is not authorized under 18 U.S.C. § 3582(c) and is not consistent
14 with policy statements if an amendment does not have the effect of lowering the Defendant’s
15 applicable guideline range because of the operation of another statutory provision, i.e., a statutory
16 minimum term of imprisonment. See, United States v. Mullanix, 99 F.3d 323, 324 (9th Cir. 1996).

17 The foregoing indisputably demonstrates that Defendant is not entitled to a reduction in
18 sentence or the need for assistance of counsel. For the reasons set forth above,

19 IT IS ORDERED:

20 Defendant’s Motion for Appointment of Counsel [Dkt. #36] and Motion for Reduction of
21 Sentence [Dkt. # 34] are **DENIED**.

22 DATED this 10th day of August, 2009.

23 
24 FRANKLIN D. BURGESS
25 UNITED STATES DISTRICT JUDGE